

To:	Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court United States District Court for the Western District of Washington on the following: ___ Patents or X Trademarks:

DOCKET NO.	DATE FILED	US District Court United States District Court for the Western District of Washington
2:08-cv-01360-JLR	9/10/08	
PLAINTIFF		DEFENDANT
Pinkberry Inc		Yoberry Inc et al.
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1. See attached	6.	11.
2.	7.	12.
3.	8.	13.
4.	9.	14.
5.	10.	15.

In the above-entitled case, the following patents(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	Amendment ___ Answer ___ Cross Bill ___ Other Pleading ___	
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1.	6.	11.
2.	7.	12.
3.	8.	13.
4.	9.	14.
5.	10.	15.

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT

CLERK	(BY) DEPUTY CLERK	DATE
Bruce Rifkin	DJ	9/12/08

FILED
LODGED

ENTERED
RECEIVED

SEP 10 2008

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPT.

08-CV-01360-CMP

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PINKBERRY, INC. a California corporation,

Plaintiffs,

v.

YOBERRY, INC., a Washington corporation,
DOES 1 to 10, inclusive

Defendants.

CASE NO. **C 08-1360**

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:

1. FEDERAL TRADEMENT INFRINGEMENT;
2. FEDERAL UNFAIR COMPETITION;
3. FEDERAL FALSE DESIGNATION OF ORIGIN
4. STATE UNFAIR AND DECEPTIVE PRACTICES;
5. STATE UNFAIR COMPETITION; AND UNJUST ENRICHMENT

Plaintiff Pinkberry, Inc. ("Pinkberry") for its Complaint against Defendant Yoberry, Inc. ("Yoberry"), alleges as follows:

JURISDICTION AND VENUE

1. This is a complaint for injunctive relief and damages based on trademark infringement, unfair competition, and false designation of origin under 15 U.S.C. Section 1051 *et seq.*, as amended (hereinafter "Lanham Act"), as well as related state law claims.

2. This Court has subject matter jurisdiction over this action under the Lanham Act, 15 U.S.C. §§ 1121; 28 U.S.C. § 1338(a) (any act of Congress relating to patents, copyrights and

COMPLAINT FOR DAMAGES AND INJUNCTIVE
RELIEF FOR: - 1
CASE NO.

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ORIGINAL

Summit ISS. SEA 2008

1 trademarks); and the doctrines of ancillary and pendant jurisdiction.

2 3. This Court has personal jurisdiction over Yoberry because Yoberry maintains its
3 place of business and conducts business in the State of Washington.

4 4. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (3) because a
5 substantial part of the events giving rise to the claims occurred in this district, a substantial part
6 of the property that is the subject of the action is situated in this district, and Yoberry was and is
7 subject to personal jurisdiction in this district at the time the action was commenced.

8 **PARTIES**

9 5. Pinkberry is, and at all times relevant hereto has been, a corporation organized
10 and existing under the laws of the State of California, having a place of business at 6310 San
11 Vicente Boulevard, Suite 100, Los Angeles, California 90048. Pinkberry's primary line of
12 business is the sale of frozen yogurt with optional toppings that include, among other things,
13 fresh fruit (the "Pinkberry Products") under the distinctive Pinkberry branding. Pinkberry
14 operates stores throughout Los Angeles and New York as well as in interstate commerce.

15 6. On information and belief, Yoberry is and at all times relevant hereto has been, a
16 Washington corporation, having a place of business at 823 3rd Avenue, Suite 109, Seattle,
17 Washington 98127. Yoberry's primary line of business is the sale of frozen yogurt with optional
18 toppings that include, among other things, fresh fruit which deliberately imitates Pinkberry's
19 highly distinctive branding.

20 7. The true names and capacities, whether individual, corporate, or otherwise, of
21 defendants sued herein as Does 1 through 10, inclusive, are unknown to Plaintiff who therefore
22 sues said defendants by such fictitious names. Plaintiff will amend this Complaint to state the
23 true names and capacities of such defendants when and if ascertained by Plaintiff.

24 **SUMMARY OVERVIEW OF COMPLAINT**

25 8. Much the way that Apple Computers revolutionized the computer industry,
26 raising the design standards and operating systems of the previously staid "beige box" computer

1 market, Pinkberry has revolutionized the yogurt business by offering a product selection and
 2 consumer experience that are uniquely Pinkberry. Since its opening, Pinkberry has been featured
 3 in numerous national publications such as Time, Fortune, Los Angeles Times, New York Times,
 4 and Reuters, and has been the subject of countless internet blogs. See, true and correct copies of
 5 a sampling of articles discussing Pinkberry attached hereto as **Exhibit "A"** and incorporated by
 6 reference. These national publications have recognized the unique and highly distinctive look
 7 and feel of Pinkberry stores, noting, for example, that Pinkberry was responsible for "help[ing]
 8 to] revive the sagging frozen yogurt industry"¹ and "develop[ing] a look that helped create a cult
 9 factor."² Among many of its other acclaims and accolades, *The Los Angeles Times* has called
 10 Pinkberry "a phenomenon, creating four-times-a-week addicts and spawning celebrity devotion,
 11 along with a chorus of imitators..."³ More recently, *The Los Angeles Times* opinion section made
 12 the tongue-in-cheek suggestion that the Los Angeles Coliseum should be renamed "Pinkberry
 13 Coliseum."⁴ Indeed, Pinkberry's popularity, success, and fame in the yogurt business are
 14 unparalleled. Pinkberry was even showcased in an American Express national television
 15 advertisement. See true and correct copies of the American Express television advertisement
 16 stills, attached hereto as **Exhibit "B"** and incorporated by reference.

17 9. Pinkberry's success has been noted by its competitors and would-be competitors,
 18 including Yoberry. On information and belief, Yoberry's branding is a deliberate imitation of
 19 the Pinkberry branding and was implemented to build market share and a customer base by
 20 exploiting Pinkberry's renowned trade name and trademarks and wrongfully trade upon
 21 Pinkberry's reputation and goodwill.

22 10. Yoberry has sought to profit from Pinkberry's success by using the YOBERRY
 23

24 ¹ Hwang & Lee, *Simple by Design*, TIME MAGAZINE, March 12, 2008.

25 ² Boyle, *Starbucks Founder Bites Into Pinkberry*, FORTUNE, October 16, 2007.

26 ³ Menn, *Welcome Jolt for Pinkberry*, LOS ANGELES TIMES, October 16, 2007.

⁴ Zirin, *The Pinkberry Coliseum*, LOS ANGELES TIMES, June 29, 2008.

trademarks (the "YOBERRY Marks") to market and sell products that are identical to the Pinkberry Products, thereby infringing upon Pinkberry's registered trademarks, service marks, and trade name (collectively, the "PINKBERRY Marks").

11. Yoberry's wrongful acts create a likelihood of confusion in the minds of consumers as to the sponsorship, endorsement, association, or approval of Yoberry's products by Pinkberry. Accordingly, Pinkberry has been and continues to be damaged by Yoberry's infringing activities, thereby necessitating this lawsuit.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

A. Pinkberry's Creation and First Use of Its PINKBERRY Trademarks, Service Marks, and Trade Name.

12. Commencing in or about January of 2005, Pinkberry created, developed and began marketing and selling the Pinkberry Products through its distinctive Pinkberry restaurants.

13. Since approximately January of 2005, Pinkberry has been using and is currently using its PINKBERRY Marks in connection with the marketing and sale of the Pinkberry Products, restaurants and related products and services. Pinkberry owns all rights in and to the federal registrations for the following PINKBERRY Marks, each of which is valid and subsisting:

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>	<u>GOODS AND SERVICES</u>
PINKBERRY	3,302,143	October 2, 2007	Frozen yogurt; frozen yogurt based dessert, combined with fruit, nuts, cereal and shaved ice and rice cakes; and smoothies
PINKBERRY	3,460,697	July 8, 2008	Restaurant services; restaurants; take-out restaurant services, café-restaurants; fast-food restaurants

1	Stylized Leaf and	3,461,027	July 8, 2008	Express restaurant services,
2	Berry Swirl Design			food kiosk services, and carry-
3				out restaurant services
4				featuring frozen yogurt-based
				desserts, frozen dairy desserts,
				smoothies and shaved ice
5	PINKBERRY &	3,460,702	July 8, 2008	Restaurant services;
6	Stylized Leaf and			restaurants; take-out restaurant
	Berry Swirl Design			services; café-restaurants; fast-
7				food restaurants

8 See, true and correct copies of those registrations attached hereto as **Exhibits "C" through "F"**
9 and incorporated by reference.

10 14. Since Pinkberry opened its first restaurant in the United States on or about
11 January of 2005, its Pinkberry Products, restaurants and services have prominently featured the
12 PINKBERRY Marks to identify them and to identify Pinkberry as their source.

13 15. Pinkberry has expended substantial time, money, and effort in promoting the
14 Pinkberry Products, restaurants and related products and services through the use of its
15 PINKBERRY Marks and in enforcing its rights in its PINKBERRY Marks throughout the
16 United States.

17 16. By virtue of Pinkberry's investments, the PINKBERRY Marks have become
18 associated in the minds of consumers and in the minds of the general public with Pinkberry and
19 have become assets of substantial value to Pinkberry and symbols of its quality products and
20 valuable goodwill. As a result of its efforts and success, in less than 3 years, Pinkberry has
21 expanded from one location in West Hollywood, California to over 60 locations in the United
22 States, with current plans to continue to expand nationally and to enter international markets.

23 17. Since January 2005, the Pinkberry Products, restaurants and services, as identified
24 by the PINKBERRY Marks, have been widely used and recognized in the United States. See
25 e.g. Hwang & Lee, *Simple by Design*, TIME MAGAZINE, March 12, 2008 (describing Pinkberry's
26 successes) and other articles attached hereto as **Exhibit "A"** and incorporated by reference.

COMPLAINT FOR DAMAGES AND INJUNCTIVE
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B. Yoberry's Unlawful Conduct.

18. On information and belief, since on or about June 20, 2007, Yoberry has operated a restaurant in which it sells the same products as the Pinkberry Products under the confusingly similar YOBERRY Marks. See true and correct copies of Yoberry's imitation of the PINKBERRY Mark attached hereto as **Exhibit "G"** and incorporated by reference.

19. Yoberry's use of the YOBERRY Marks in the promotion, advertising and sale of directly competitive frozen yogurt products and services constitutes the use in commerce of colorable imitations, copies and reproductions of the PINKBERRY Marks, and is deceptively and confusingly similar to Pinkberry's use of the PINKBERRY Marks for identical products and is likely to cause confusion, mistake, or deception in the minds of the public.

20. Pinkberry has not consented to, sponsored, endorsed, or approved Yoberry's use of the PINKBERRY Marks in connection with any of Yoberry's products or services.

21. Yoberry's acts of improper use and promotion of the PINKBERRY Marks are likely to cause confusion or mistake in the minds of consumers as to the sponsorship, endorsement, association, or approval of Yoberry's products and services by Pinkberry. Likelihood of confusion is and will only be exacerbated by the fact that Yoberry's products and services are directly competitive with and/or highly related to Pinkberry's products and services. Yoberry's and Pinkberry's products are likely to be purchased by the same types of consumers, advertised and promoted in the same and/or similar advertising channels, and marketed and sold in similar retail establishments.

22. On information and belief, the foregoing actions of Yoberry have been knowing, deliberate, willful, and in utter disregard of Pinkberry's rights.

23. Yoberry's unlawful activity results in irreparable harm and injury to Pinkberry. Among other harms, it deprives Pinkberry of its absolute right to determine the manner in which its image is presented to the general public through its products and services; deceives the public as to the origin and sponsorship of such products and services; wrongfully trades upon, and

1 cashes in on, Pinkberry's reputation and exclusive rights in its trademarks; and irreparably harms
2 and injures Pinkberry's business reputation. As a direct and proximate result of Yoberry's
3 conduct set forth above, Pinkberry has been injured and damaged in an amount to be proven.

4 24. Yoberry's and Does 1 through 10's conduct is continuing, and will continue,
5 unless enjoined by the Court.

6 25. Unless Defendants are enjoined from engaging in the infringing conduct described
7 above, Pinkberry will suffer irreparable injury and further damage. Thus, it would be difficult to
8 ascertain the amount of compensation which could afford Pinkberry adequate relief for the acts
9 of Defendants present and threatened, and Pinkberry's remedy at law is not adequate to
10 compensate for said harm and damage.

11 **FIRST CLAIM FOR RELIEF**

12 **TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114 [LANHAM ACT § 32]**

13 26. Pinkberry repeats paragraphs 1-25, above, and incorporates the allegations thereof
14 as if herein set forth in their entirety.

15 27. Pinkberry has used its PINKBERRY Marks in connection with, and to identify the
16 source of the Pinkberry Products and to distinguish those products from similar products offered
17 by other companies, by, and without limitation, prominently displaying the PINKBERRY Marks
18 on Pinkberry's storefronts, employees' uniforms, cups, to-go containers and bags, and
19 advertising and promotional materials distributed throughout the United States, including,
20 without limitation, its website: www.pinkberry.com.

21 28. Defendants' use of the YOBERRY Marks in connection with advertising,
22 promotion and sale of directly competitive products and services infringes Pinkberry's registered
23 PINKBERRY Marks and is likely to cause confusion, mistake, or deception of the public as to
24 the identity, source and/or sponsorship of Yoberry's products and services.

25 29. Defendants' use of the YOBERRY Marks has been made notwithstanding
26 Pinkberry's well-known and prior-established rights in the PINKBERRY Marks and with both

1 actual and constructive notice of Pinkberry's federal trademark registrations and rights under
2 15 U.S.C. § 1072.

3 30. Defendants have intentionally adopted and continue to use the YOBERRY Marks
4 with the intent of causing confusion, mistake, or deception of the public as to the identity and
5 source of Yoberry's products and services.

6 31. The above acts by Defendants constitute trademark infringement. By reason of
7 the foregoing, Defendants have violated and will continue to violate § 32(1) of the Lanham Act,
8 15 U.S.C. § 1114(1), unless enjoined by the Court.

9 32. Defendants' infringing activities have caused, and unless enjoined by this Court,
10 will continue to cause substantial, immediate, and irreparable injury and other damage to
11 Pinkberry's business, reputation and goodwill.

12 33. Pinkberry has no adequate remedy at law unless Defendants' infringing conduct is
13 enjoined by this Court.

14 **SECOND CLAIM FOR RELIEF**

15 **UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a) [LANHAM ACT § 43(a)]**

16 34. Pinkberry repeats paragraphs 1-33, above, and incorporates the allegations thereof
17 as if herein set forth in their entirety.

18 35. Defendants' use of the YOBERRY Marks in connection with the advertising,
19 promotion and sale of directly competitive products and services constitutes unfair competition
20 under 15 U.S.C. § 1125(a).

21 36. Defendants' use of the YOBERRY Marks is likely to cause confusion, mistake, or
22 deception among consumers as to whether Yoberry is affiliated, connected or associated with
23 Pinkberry, and as to whether Pinkberry is the source of Yoberry's products and commercial
24 activities or has sponsored or approved them.

25 37. Defendants' unfair competition has caused and will continue to cause irreparable
26 injury and other damage to Pinkberry's business, reputation and goodwill in its PINKBERRY

1 Marks for which Pinkberry has no adequate remedy at law.

2 **THIRD CLAIM FOR RELIEF**

3 **FALSE DESIGNATION OF ORIGIN**

4 **UNDER 15 U.S.C. § 1125(a) [LANHAM ACT § 43(a)]**

5 38. Pinkberry repeats paragraphs 1-37, above, and incorporates the allegations thereof
6 as if herein set forth in their entirety.

7 39. Yoberry's YOBERRY Marks are such colorable imitations and copies of the
8 PINKBERRY Marks that Yoberry's use thereof in connection with directly competitive products
9 and services is likely to cause confusion, mistake, or deception as to whether Yoberry is
10 affiliated, connected, or associated with Pinkberry, and as to whether Pinkberry is the source of
11 Yoberry's products, services, or commercial activities or has sponsored or approved them.

12 40. Defendants' use of the YOBERRY Marks is a false designation of the origin of
13 Yoberry's products, services or commercial activities and/or a false or misleading representation
14 concerning such products, services or commercial activities under 15 U.S.C. § 1125(a).

15 41. As a direct and proximate result of the violations identified herein, Pinkberry has
16 been injured in its business and property. Pinkberry has suffered damages in excess of the
17 jurisdictional minimum of this Court in an amount to be proven at trial.

18 **FOURTH CLAIM FOR RELIEF**

19 **UNFAIR AND DECEPTIVE PRACTICES**

20 **UNDER WASHINGTON CONSUMER PROTECTION ACT RCW 19.86**

21 42. Pinkberry repeats paragraphs 1-41, above, and incorporates the allegations thereof
22 as if herein set forth in their entirety.

23 43. Defendants' activities as stated herein constitute unfair and deceptive acts in trade
24 or commerce that affect the public interest and violate the Washington Consumer Protection Act,
25 RCW 19.86 *et seq.* ("Act").

26 44. Pursuant to the Act, Pinkberry is entitled to preliminary and permanent injunctive

1 relief ordering Defendants to cease this unfair competition, as well as pay damages, in an amount
2 to be proven at trial, plus attorneys' fees and exemplary damages to the extent permitted by the
3 Act.

4 **FIFTH CLAIM FOR RELIEF**

5 **UNFAIR COMPETITION UNDER WASHINGTON COMMON LAW**

6 45. Pinkberry repeats paragraphs 1-44, above, and incorporates the allegations thereof
7 as if herein set forth in their entirety.

8 46. Defendants' activities as stated herein constitute common law unfair competition.

9 47. Pinkberry is entitled to preliminary and permanent injunctive relief ordering
10 Defendants to cease this unfair competition, as well as damages associated with this unfair
11 competition.

12 **SIXTH CLAIM FOR RELIEF**

13 **UNJUST ENRICHMENT**

14 48. Pinkberry repeats paragraphs 1-47 above, and incorporates by reference the
15 allegations thereof as if herein set forth in their entirety.

16 49. As a result of the conduct of Defendants, the defendants have been unjustly
17 enriched at the expense of Pinkberry and the law thereby implies a contract by which Defendants
18 must pay to Pinkberry the amount by which, in equity and good conscience, Defendants have
19 been unjustly enriched at Pinkberry's expense.

20 **WHEREFORE**, Pinkberry seeks judgment against Defendants as follows:

21 1. That Defendants and their agents, officers, servants, employees, representatives,
22 licensees, franchisees, successors, assigns, attorneys and all other persons who are acting in
23 concert or participation with any of them, and each of them, be preliminarily and permanently
24 enjoined from any further use of the YOBERRY Mark or any other trademark, trade name or
25 other designation that is confusingly similar to the PINKBERRY Marks;

26 2. That Defendants and their agents, officers, servants, employees, representatives,

licensees, franchisees, successors, assigns, attorneys and all other persons who are acting in concert or participation with any of them, and each of them, be preliminarily and permanently enjoined from any further acts of unfair competition against Pinkberry;

3. That Defendants be required to file with the Court and serve on Pinkberry within thirty (30) days after entry of the injunction, a declaration under oath setting forth in detail the manner and form in which Defendants have complied with the injunctions;

4. That, pursuant to 15 U.S.C. § 1117, Defendants be held liable for all damages suffered by Pinkberry resulting from the acts alleged herein;

5. That Pinkberry receive an award in the amount by which Defendants have been unjustly enriched;

6. That, pursuant to 15 U.S.C. § 1117, Defendants be compelled to account to Pinkberry for any and all profits derived by Defendants from their illegal acts complained of herein;

7. That, pursuant to Washington Consumer Protection Act, RCW §§ 19.86.020, *et seq.* and Washington common law, Defendants be compelled to pay damages, in an amount to be proven at trial, plus attorneys' fees and exemplary damages to the extent permitted by the Act.

8. That Defendants be ordered pursuant to 15 U.S.C. § 1118 to deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles, advertisement, menus, banners, or the like in possession or custody, or under the control of either Yoberry or Does 1 through 10 bearing any of the YOBERRY Marks; and

9. That the Court declare this action to be an exceptional case and award Pinkberry its full costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

10. That the Court grant Pinkberry any other remedy to which it may be entitled as provided for in 15 U.S.C. §§ 1116 and 1117 and/or under state law; and

11. For such other and further relief that the Court deems just and proper.

1 DATED this 10th day of September, 2008.

2 Respectfully submitted,

3 SUMMIT LAW GROUP PLLC
4 Attorneys for Plaintiff

5
6 By



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COMPLAINT FOR DAMAGES AND INJUNCTIVE
RELIEF FOR: - 12
CASE NO.

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EXHIBIT A

TIME

IN PARTNERSHIP WITH CNN

Wednesday, Mar. 12, 2008

Simple by Design

By Shelly Hwang and Young Lee

Her restaurant idea was a flop. But like many entrepreneurs Shelly Hwang, 34, believed in herself. All she needed was the right concept. Partnering with architect Young Lee, 44, (first in business, then in love), the couple launched a frozen yogurt shop in Los Angeles. It was a sensation. Three years later, Pinkberry's less-like-ice-cream, more-like-yogurt tangy taste has helped revive the sagging frozen yogurt industry that peaked in the 1980s. Pinkberry's twist is its simplicity: it has three flavors, healthy toppings and a pop design. The 45 stores in LA and New York are just a start, as the company has global expansion ideas. A number of competitors have sprung up, and there are fights brewing over who was first and who copied whom. But the tension has only garnered more attention and more devotees to the product.

Lee: We first met in 2003 when Shelly hired me as a designer. I owned a small interior design firm and Shelly came in looking for a designer and architect to work with a 600-square-foot space she had rented. I thought it was one of the worst locations I had ever seen in my life--a former on-car garage, out of the way, set back from the boulevard. It was visually impossible to see it from the road. But she had already picked the place and had paid a year's rent up front. We started dating about six months after we met.

Hwang: I was planning to open a different concept in that spot. I wanted an English Tea House for afternoon high tea and I thought it was quite a nice place. It was quiet, set back away from the road where people could sit and enjoy their tea selections and relax, which is why I chose it. But things didn't go very well. I only had 600-square-feet and that wasn't even big enough for a kitchen. We tried to get permits for outdoor seating and a liquor license, but there was strong opposition in the neighborhood. They eventually voted 'No' to both after many hearings. Young started talking about the frozen yogurt shop he had been dreaming about setting up in a place like Westfield mall in Century City. We took his concept and put it in my location. It was a desperate move.

Lee: I have lots of ideas and sometimes I persuade people they are good, but most of the time I don't. Shelly really liked the frozen yogurt idea so she started to investigate the whole

gelato/yogurt field and practiced making it. She practiced for almost a year while still working on the Tea House idea. Thank god that got rejected! We came up with the name Pinkberry because pink is a very positive color and the word had a nice rhyme to it. We wanted people to picture fresh, happy berries.

Hwang: I had no experience in the frozen yogurt or dairy business. But I had opened two restaurants before so I knew a little bit about the food business, although both of those endeavors failed. I had graduated from business school at USC (Southern California) and was inexperienced when I first opened those. I left restaurants and worked at my father's textile factory for three years. But I wanted to try and start something on my own again.

Lee: Many people have said the Pinkberry flavor reminds them of Greek yogurt and maybe that is because we stuck with a Yoplait-like concept. We weren't going for a frozen yogurt that mimicked the taste of ice cream, but one that had a natural yogurt flavor. I got the idea for this kind of yogurt when I visited Vienna in 1993 and first tasted a specific kind of soft serve gelato-like yogurt. Shelly researched and found the Italian inventor, Luciano Rabboni, and he gives us a lot of the ingredients today. Some places already had it in the U.S., but it never really took off. Shelly twisted the flavor by reducing the sugar and making it nonfat. Then, about five years ago, I was in Hawaii at the Dole Pineapple Plantation and tasted Dole Whip (a soft serve sorbet) with freshly chopped pineapple. It reminded me of the same kind of refreshing taste the Italian yogurt had. That's when I thought about focusing on using mostly fresh fruit toppings.

Hwang: What is so interesting about frozen yogurt is that it's a very simple concept. It's not like steak or pasta or other food where you have to learn how to cook it in different manners. I could really focus on the flavor of the frozen yogurt. And I don't mean 10 or 20 different flavors, but just the one plain yogurt flavor. It meant we had very little inventory. I used live active yogurt cultures from real yogurt and made sure the dessert was 100 percent nonfat. We reduced the sugar and played up its tangy tart flavor. I added more real yogurt to give it an even tangier finish than normal.

Lee: I wanted to have fun with the store's design. When you walk in, you see a pebble floor that might remind you of the beach. I think of a hot summer day where I am rewarded with ice cream at the end. I used Philippe Starck's Victoria Ghost chairs and a George Nelson-inspired bench. Scandinavian designs give the place a retro-modern look with green circle dots to evoke Danish butter and dairy products and a Le Klint lamp that looks like a yogurt

swirl. The figurines on the side are from Alessi, an Italian company that makes everyday household products with an artistic flair. We sell them and people buy them as collectibles, but they also act like a flower decoration would, accentuating the pop feel of the place.

Hwang: We wanted to keep everything simple with only two or three flavors that were customized with toppings instead of adding many different kinds, which would mean more machines and more complications for us and for the customers.

Lee: The biggest challenge was selling the idea to people, like the landlord. We emphasized fresh toppings, a few flavors and a simple design. I would tell them we have two kinds of yogurt, plain and green tea. The response would be something like, "well, across the street they have ten different flavors and they aren't doing well and you have only two flavors. Why would that work?" Then I would say we have fresh fruit toppings. The response would be, "some of the big smoothie companies started with fresh fruit but now they freeze the fruit to stabilize the price. Why would you go with a fluctuating fresh fruit price which puts you at risk financially?" I would tell them my design ideas, which included \$600 tables, \$350 chairs and a \$1,200 bench. I wanted to use an expensive build-out that made everything reflective. They thought we were crazy to spend that kind of money when the average yogurt ticket was only \$6.

Hwang: We opened in January 2005 in my out-of-the-way place on 868 North Huntley Drive in West Hollywood.

Lee: About a month into it I got a phone call from an employee that the roof was leaking because of all the rain that month. Shelly and I were in the middle of dinner, but stopped eating and drove to Pinkberry. I was about to park, and tried to look inside but couldn't see anything because the windows were fogged. When I walked in, the place was filled with people having yogurt. It's not a big space, but all these people were sitting inside on a rainy evening in January. That's when I realized we might be successful. We forgot about the leak.

Hwang: I thought we had something that rainy day, too, but I truly believed it when customers kept coming up to me and telling me "I have to have this yogurt every day. I can't sleep if I don't have Pinkberry!" When I heard a few people tell me this I thought, we have something here.

Lee: In May we started getting these lines around the block. We would have fifteen customers come 30 minutes before we opened and wait there. Throughout the day the line

never stopped. We had to hire a security guard and use a rope to guide the people in a zig-zag line to control everyone. The neighborhood was getting upset because people were illegally parked, ditching their cars in front of the houses. The parking enforcement came out and started ticketing. One of the meter maids told me the city was making \$175,000 a month off of our customers' tickets. Ironically, the ruckus only got us more attention and more patrons. We were doing well because we used the highest quality products, had great service and provided a nice atmosphere. And obviously it was our own business so we were focused on it. Customers are extremely smart and businesses tend to overlook that. People understand instinctively when something is a good concept with a beautiful design.

Hwang: We did very little marketing or advertising. Ads don't really work with the Pinkberry concept because at the end of the day we want customers telling us what is good and what is not. The feedback serves as our marketing. Almost all of it was word of mouth. The newspaper articles talking about the yogurt wars and yogurt scandals helped put us on the map. The more that was written the more people showed up to find out about this yogurt.

Lee: We now have 36 shops in the Los Angeles area and 9 in New York. We plan to expand to more cities in the U.S. and overseas. It's important not to over do it. Today we have 12 franchises that own many of the stores. Pinkberry Corporate owns three. Howard Schultz, CEO of Starbucks, became our partner five months ago and he is helping us build the infrastructure to turn this into a global brand. It's a challenge to expand and keep up the high quality. Schultz will give us tips.

Fortune

Oct. 16, 2007

Starbucks founder bites into Pinkberry

The red-hot frozen yogurt chain gets a big boost from the man who brought you the \$4 latte

Matthew Boyle

(Fortune) -- Red-hot frozen yogurt chain Pinkberry has received a \$27.5 million infusion of cash from Starbucks founder Howard Schultz's venture capital firm, Fortune has learned.

The deal, which will be announced later today, confirms long-held speculation that Seattle-based Maveron - whose prior investments include eBay, drugstore.com, and Good Technology, now owned by Motorola - sees a bright future for Pinkberry, which was launched two years ago by a failed restaurateur and a former nightclub bouncer. (See story here.)

Schultz was not available to comment, but in a press release touting the deal he called Pinkberry founders Shelly Hwang and Young Lee "visionary entrepreneurs" and labeled their brand "a cultural phenomenon."

The burgeoning chain now has 32 stores in New York and Los Angeles, and plans to grow by expanding its roster of company-owned stores and franchises. Hwang and Lee told Fortune earlier this year that they hope to have 50 locations by year-end. Stores in Las Vegas and London are also on tap.

Pinkberry's tart-yet-sweet yogurt, topped with the customer's choice of fresh berries, granola, or even Fruity Pebbles cereal, has won it a cult following that includes celebrities like Salma Hayek and Paris Hilton. (Mike Tyson once demanded his cookies and cream topping on the bottom, and the staff wisely complied.) It's pricey - a large green tea with three toppings is nearly ten bucks - but Pinkberry's largely female clientele doesn't pinch pennies.

"I've seen people come in, order a small, eat it and then get right back in line for another," says Daihwan Choi, who has exclusive development rights in New York City.

Some toppings are not even on the menu, which only adds to the allure, and the minimalist décor features \$350 Philippe Starck chairs and \$250 Le Klint lamps. (Lee even secured a 10% volume discount from trendy furniture shop Design Within Reach on the lamps.)

"They really developed a look that helped create a cult factor," says Lesley Balla, editor of food blog Eater LA, who adds that top city chefs have worked frozen yogurt into their menus. "It's Whole Foods meets Jamba Juice meets Sephora," says branding consultant Nick Hahn.

But that winning formula has also spawned a slew of copycats, and Pinkberry will be hard pressed to clearly differentiate itself going forward. Of course, Schultz's investment should certainly help in that regard. Starbucks (Charts, Fortune 500) is much more about the experience

than the overpriced product, so Schultz will likely aim to foster a similar unique environment at Pinkberry.

This is the first outside investment in Pinkberry, which had previously been funded by its founders. Hwang and Lee will retain "significant equity" in Pinkberry and work with Maveron to create an employee stock option program, according to the announcement.

Los Angeles Times

Oct. 16, 2007

Welcome Jolt for Pinkberry

A venture capital firm co-founded by Starbucks' chief buys a stake in the chain. Expansion is planned.

Joseph Menn

Watch out world, a frozen treat could be the next latte.

A venture capital firm co-founded by Starbucks Corp. Chairman Howard Schultz has purchased a large serving of the crazy successful, sweet-yet-tart-dessert chain Pinkberry Inc. for \$27.5 million, the firm, Maveron, said late Monday.

Schultz and Dan Levitan, the other founder of Seattle-based Maveron, want L.A.-based Pinkberry to expand beyond Southern California, where it has 28 stores, and New York, where it has five.

"Pinkberry has an opportunity to build a national and a global footprint," Schultz said in an interview. "It's very rare to see a retail company, so early on, create the kind of customer loyalty and emotional attachment that they've been able to create. In 30 years, I can count on one hand the number of time I've witnessed it."

Since Pinkberry was founded in a 600-square-foot space, a former garage, in West Hollywood in early 2005, the tangy, low-calorie treat has become a phenomenon, creating four-times-a-week addicts and spawning celebrity devotion, along with a chorus of imitators with knock-off names like Kiwiberri, Roseberry and Berri Good.

Pinkberry's founders knew they had a hit in the early days. They were summoned to the first store because the ceiling had sprung a major water leak and discovered it was mobbed with customers anyway.

Hyekyung "Shelly" Iiwang focused on the dessert, while a friend, kickboxer-turned-architect Young Lee, designed the pastel-hued interior of the stores. Lee said the stores' loud music helped evoke the feeling of an old-fashioned ice-cream truck.

All but three of the 33 Pinkberry stores are owned by franchisees, and the operational headaches have mounted accordingly.

"I have my limits as a multitasking person," Lee said. "The leasing situations, dealing with franchising -- it met my limit."

Schultz knows something about expanding quickly without alienating a customer base, having joined Starbucks when it had four locations. Today the coffee chain has 15,000 stores worldwide.

"They have been there, where we want to go," said Lee, adding that Pinkberry would aim to do some things differently. "We can get big but also stay small," he said. "It may sound like an oxymoron, but that is my main goal."

Lee cited Apple Inc. and Nike Inc. as companies that have maintained a positive social feel in their stores and marketing.

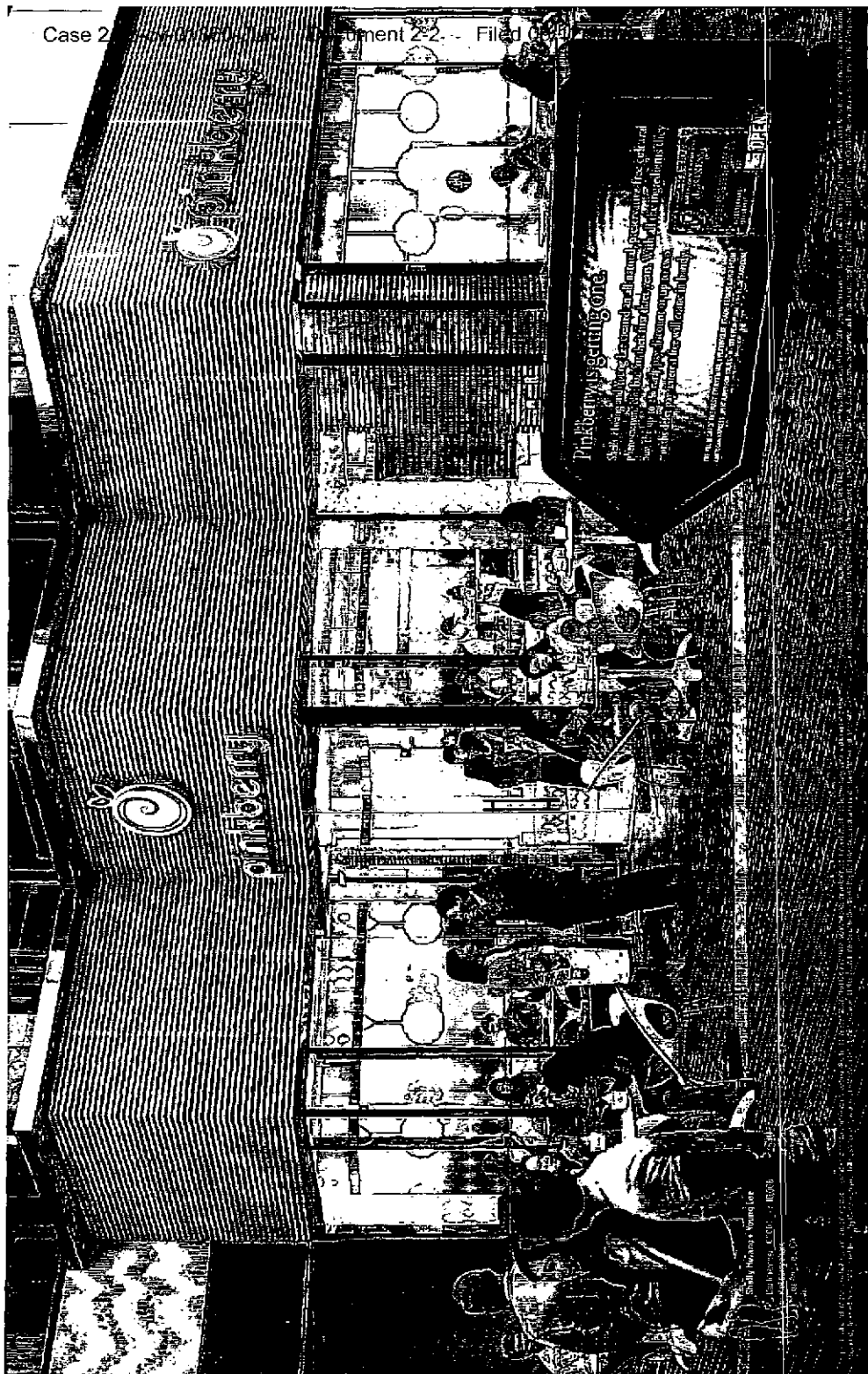
"My partner and I feel like we had a child together, and now we need another master for our child's growth," Lee said.

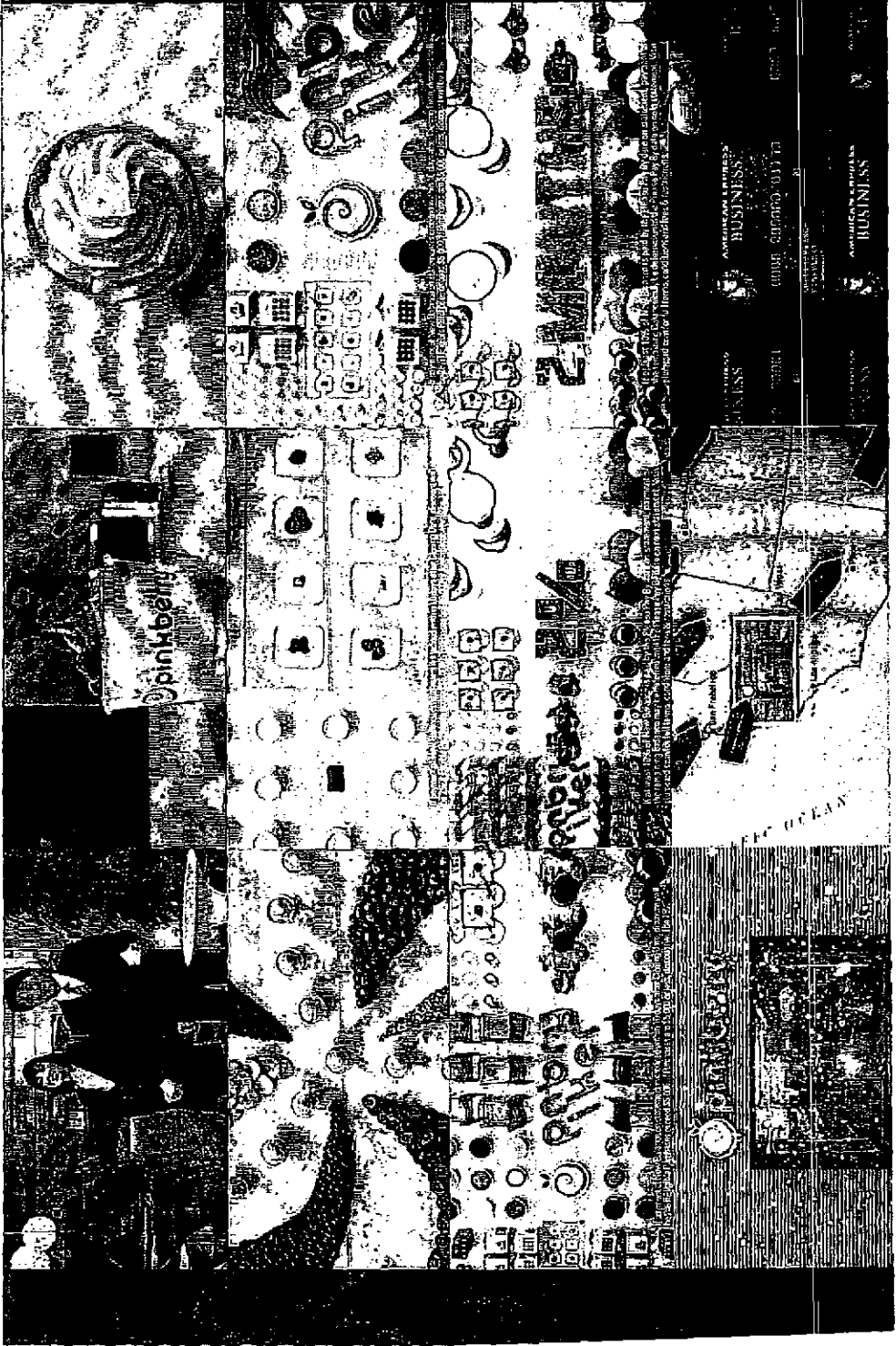
South Korean immigrants Lee, 43, and Hwang, 33, will remain actively involved, while Schultz will help set strategy and seek out top executives. Neither the founders nor Maveron will have a majority stake, because another chunk of equity will be devoted to stock options for employees.

Maveron had been courting Pinkberry since November, as have many other venture capital firms and wealthy individual investors. Lee said he wouldn't reveal the famous names who wanted to invest, "for their own good."

Nine-year-old Maveron, which is currently investing its third, \$600-million fund, is unusual in that it looks for hot consumer brands instead of emerging technologies. Its hits include EBay Inc., Drugstore.com and Web photo site Shutterfly Inc.

EXHIBIT B





AMERICAN BUSINESS

ELITE GROUP

AMERICAN BUSINESS

ELITE GROUP

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AMERICAN BUSINESS

ELITE GROUP

EXHIBIT C

Int. Cls.: 30 and 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 3,302,143

United States Patent and Trademark Office

Registered Oct. 2, 2007

**TRADEMARK
PRINCIPAL REGISTER**

pinkberry

PINKBERRY, INC. (CALIFORNIA CORPORATION)

2212 W. WASHINGTON BLVD.

LOS ANGELES, CA 90018

FOR: FROZEN YOGURT AND FROZEN YOGURT BASED DESSERTS COMBINED WITH FRUIT, NUTS, CEREAL AND SHAVED ICE AND RICE CAKES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-31-2005; IN COMMERCE 9-30-2006.

FOR: SMOOTHIES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 1-31-2005; IN COMMERCE 9-30-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 78-876,538, FILED 5-4-2006.

JAMES A. RAUEN, EXAMINING ATTORNEY

EXHIBIT D

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

Reg. No. 3,460,697

United States Patent and Trademark Office

Registered July 8, 2008

**SERVICE MARK
PRINCIPAL REGISTER**

pinkberry

**PINKBERRY, INC. (CALIFORNIA CORPORATION)
6310 SAN VICENTE BOULEVARD
SUITE 100
LOS ANGELES, CA 90048**

FIRST USE 1-31-2005; IN COMMERCE 10-31-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

**FOR: RESTAURANT SERVICES; RESTAURANTS;
TAKE-OUT RESTAURANT SERVICES; CAFE-RESTAURANTS;
FAST-FOOD RESTAURANTS, IN
CLASS 43 (U.S. CLS. 100 AND 101).**

SER. NO. 77-205,559, FILED 6-13-2007.

MARCIE MILONE, EXAMINING ATTORNEY

EXHIBIT E

Int. Cls.: 30, 32 and 43

Prior U.S. Cls.: 45, 46, 48, 100 and 101

Reg. No. 3,461,027

United States Patent and Trademark Office

Registered July 8, 2008

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**



PINKBERRY, INC. (CALIFORNIA CORPORATION)

**6310 SAN VICENTE BOULEVARD
SUITE 100
LOS ANGELES, CA 90048**

FOR: FROZEN YOGURT; FROZEN YOGURT BASED DESSERTS COMBINED WITH FRUIT, NUTS, CEREAL AND SHAVED ICE; FROZEN DAIRY DESSERTS; FROZEN DAIRY DESSERTS COMBINED WITH FRUIT, NUTS, CEREAL AND SHAVED ICE; AND RICE CAKES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-31-2005; IN COMMERCE 9-30-2006.

FOR: SMOOTHIES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 1-31-2005; IN COMMERCE 9-30-2006.

FOR: EXPRESS RESTAURANT SERVICES, FOOD KIOSK SERVICES, AND CARRY-OUT RESTAURANT SERVICES FEATURING FROZEN YOGURT, FROZEN YOGURT-BASED DESSERTS, FROZEN DAIRY DESSERTS, SMOOTHIES AND SHAVED ICE, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 1-31-2005; IN COMMERCE 10-31-2006.

THE COLOR(S) PINK AND LIME GREEN IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF A STYLIZED BERRY, WITH THE BODY IN PINK AND A LIME GREEN LEAFY STEM.

SER. NO. 77-283,994, FILED 9-19-2007.

ESTHER A. BORSUK, EXAMINING ATTORNEY

EXHIBIT F

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

Reg. No. 3,460,702

United States Patent and Trademark Office

Registered July 8, 2008

**SERVICE MARK
PRINCIPAL REGISTER**



PINKBERRY, INC. (CALIFORNIA CORPORATION)

6310 SAN VICENTE BOULEVARD

SUITE 100

LOS ANGELES, CA 90048

**FOR: RESTAURANT SERVICES; RESTAURANTS;
TAKE-OUT RESTAURANT SERVICES; CAFE-RESTAURANTS;
FAST-FOOD RESTAURANTS, IN
CLASS 43 (U.S. CLS. 100 AND 101).**

FIRST USE 1-31-2005; IN COMMERCE 10-31-2006.

**THE COLOR(S) PINK AND LIME GREEN IS/ARE
CLAIMED AS A FEATURE OF THE MARK.**

**THE MARK CONSISTS OF THE WORD "PINK-
BERRY" IN LIME GREEN LETTERING WITH A
SWIRL TO THE LEFT OF THE WORD "PINKBER-
RY". THE SWIRL IS PINK, BENEATH A LIME
GREEN STYLIZED LEAF.**

SER. NO. 77-205,636, FILED 6-13-2007.

MARCIE MILONE, EXAMINING ATTORNEY

EXHIBIT G

